



U.S. Department of  
Transportation

General Counsel

400 Seventh St., S.W.  
Washington, D.C. 20590

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266216

September 18, 2002



Vernon A. Williams, Secretary  
Surface Transportation Board  
Suite 700  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Re: Fin. Dkt. No. 34178

Dear Secretary Williams:

Enclosed herewith are the original and ten copies of the Response of the United States Department of Transportation to the procedural schedule proposed in the above-referenced proceeding. There is also a computer diskette of this document, convertible into Word Perfect. I have included as well an additional copy of the Department's comments that I request be date-stamped and returned with the messenger.

Respectfully submitted,

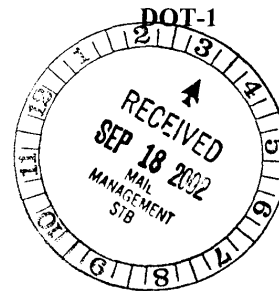
Paul Samuel Smith  
Senior Trial Attorney

Enclosures

cc: Counsel for Applicants  
Parties of Record

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Before the  
Surface Transportation Board  
Washington, D.C.



Finance Docket No. 34178

)  
Dakota, Minnesota & Eastern Railroad Corporation )  
and Cedar American Rail Holdings, Inc. )  
-- Control -- Iowa, Chicago & Eastern )  
Railroad Corporation )

**Response of the United States Department of Transportation  
to the Proposed Procedural Schedule**

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Introduction

Dakota, Minnesota & Eastern Railroad Corporation, Cedar American Rail Holdings, Inc. and Iowa, Chicago & Eastern Railroad Corporation (collectively, "Applicants") have petitioned the Surface Transportation Board ("STB" or "Board") to adopt a procedural schedule in the above-referenced case. DME-3. The United States Department of Transportation ("DOT" or "Department") hereby requests that the proposed schedule be modified in order to accommodate our participation in the case.

Discussion

The Applicants seek an expedited schedule that, *inter alia*, contains one opportunity for comments by all interested parties and a reply thereto by the Applicants twenty days later, followed by a decision from the Board within forty-five days. *Id.* Unfortunately, this sequence does not contemplate the Department's historical practice, followed in virtually all rail consolidation cases (and certain other proceedings), of

expressing its substantive views on pending issues only after considering the submission of other interested parties. DOT follows this approach in order to assess the record when it consists of more than simply the submissions of the applicants in any given matter.<sup>1</sup> The procedural schedule in “major” consolidation cases generally lends itself to this practice by calling for briefs after all parties have submitted their evidence and argument. In other proceedings the Board has been sensitive to the Department’s reluctance to comment on the merits in the face of an incomplete record. *See, e.g.*, Fin. Dkt. No. 34000 (Canadian National/Wisconsin Central railroad merger); Fin. Dkt. No. 33388 (Sub-No. 90) (“Buffalo Rate Study”). DOT has always appreciated this consideration.

Although the instant transaction may properly be considered “minor” under applicable regulations, the application and related filings present issues that may attract significant interest from railroads and others. We therefore ask that the STB again permit the Department the opportunity to take a substantive position on the issues presented by this transaction after the record has been developed through the submissions of other interested parties.<sup>2</sup> A period of twenty days following the initial filings of other parties would be consistent with the time the Applicants have allowed for their own response and would conform to the applicable statutory time frame. 49 U.S.C. § 11325(d). DOT also proposes that the Applicants then be allotted another twenty days for their response, thereby preserving the traditional right of applicants to close the record.

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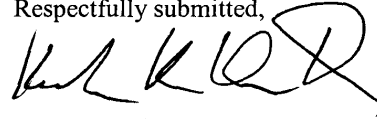
<sup>1/</sup> The role of the Department in such proceedings is ultimately grounded in the statutory and regulatory provisions and administrative orders that govern this transaction, and in DOT’s statutory responsibilities as the Executive Department of the United States established by Congress “to provide general leadership in identifying and solving transportation problems,” to the end that the Secretary of Transportation “shall provide leadership in the development of transportation policies and programs.” 49 U.S.C. §§ 101(b)(5), 301(2), respectively.

<sup>2/</sup> If it wished to expand such an opportunity to others, the Board could allow for reply comments generally.

Conclusion

For the foregoing reasons, the Department requests that the Board adopt a procedural schedule that permits DOT to file comments after the comments of interested third parties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kirk K. Van Tine', with a large, stylized 'D' at the end.

KIRK K. VAN TINE  
General Counsel

September 18, 2002